MOHAMAD DIN TALIP

v.

POLIS DI RAJA MALAYSIA

COURT OF APPEAL, PUTRAJAYA
DENIS ONG JCA
MOHD GHAZALI YUSOFF JCA
HASHIM YUSOFF JCA
[CIVIL APPEAL NO: Q-01-96-99]
26 NOVEMBER 2004

ADMINISTRATIVE LAW: *Remedies - Certiorari, application for - Nature of remedy - Whether discretionary remedy*

ADMINISTRATIVE LAW: *Exercise of administrative powers - Judicial review - Whether court should be concerned with the decision-making process rather than the decision itself*

The appellant – a police lance-corporal – was adjudged a bankrupt on 25 August 1995. Disciplinary action was initiated against him by the respondent based upon two charges. The first charge concerned a wilful breach of a lawful order – para. 96 of the Standing Orders – in that he failed to report to his superior officer that he was heavily in debt. The second charge concerned tarnishing the good name and reputation of the police force by his act of bankruptcy. He pleaded guilty to both charges on 5 May 1997. In respect of the first charge he was given a severe reprimand. For the second charge, he was dismissed from the police force with immediate effect. His application for a writ of certiorari to quash the decision of the respondent was dismissed with costs by the High Court. He appealed to the Court of Appeal. The appeal before the Court of Appeal was confined to only the second charge and proceeded on one ground – that the High Court had erred in law and in fact when it held that the dismissal was a matter of policy.

Held (dismissing the appeal with costs)
Per Mohd Ghazali Yusoff JCA:

[1] The remedy by way of *certiorari* is an extraordinary jurisdiction and a discretionary remedy with the High Court. In the instant case, the High Court declined to issue the order of *certiorari* to quash the respondent's decision as it was of the view that there was nothing wrong with the punishment meted out and that policy considerations were involved in the

decision made by the disciplinary board. The Court of Appeal could not find where the High Court judge went wrong in exercising his discretion and making the decision that he did. (pp 810 f & 811 b)

[2] The court is more concerned with the decision-making process and not the decision itself. The court should not readily question the administrative decision of the respondent as that was its absolute discretion. (p 816 c)

[3] Proportionality is a ground of review but in the instant case the Court of Appeal could not find any ground for interfering with the decision of the High Court judge in refusing to issue the order for *certiorari*. The Court of Appeal was of the view that the punishment of dismissal was proportionate with the disciplinary offence under the second charge. (p 817 d, f)

*[**Bahasa Malaysia** Translation Of Headnotes*

Perayu – seorang anggota polis bepangkat lans korporal – telah dihukum bankrap pada 25 Ogos 1995. Tindakan disiplin telah diambil terhadapnya oleh responden berdasarkan kepada dua pertuduhan. Pertuduhan pertama kerana dengan sengaja melanggar suatu perintah yang sah – perenggan 96 pada Standing Orders – iaitu bahawa beliau gagal melaporkan kepada pegawai atasannya bahawa beliau menanggung beban hutang yang banyak. Pertuduhan kedua pula kerana telah merosakkan reputasi dan nama baik pasukan polis dengan perbuatan kebankrapannya itu. Pada 5 Mei 1997, perayu mengaku salah terhadap kedua-dua pertuduhan. Berikutnya, beliau telah diberikan amaran keras atas pertuduhan pertama. Bagaimanapun, berkaitan pertuduhan kedua, beliau telah dibuang kerja dan dipecat dari pasukan polis dengan serta merta. Permohonan perayu untuk mendapatkan writ *certiorari* bagi membatalkan keputusan responden telah ditolak oleh Mahkamah Tinggi dengan kos. Perayu merayu ke Mahkamah Rayuan. Rayuannya ke Mahkamah Rayuan adalah terhad kepada pertuduhan kedua dan didasarkan hanya kepada satu alasan – bahawa Mahkamah Tinggi silap di sisi undang-undang apabila memutuskan bahawa pembuangan kerja perayu adalah merupakan perkara dasar.

Diputuskan (menolak rayuan dengan kos)
Oleh Mohd Ghazali Yusoff HMR:

[1] Remedi melalui *certiorari* adalah suatu bidang kuasa luar biasa dan merupakan remedi yang bergantung kepada budibicara Mahkamah Tinggi. Dalam kes semasa, Mahkamah Tinggi telah enggan mengeluarkan perintah *certiorari* bagi membatal keputusan responden kerana ia berpendapat bahawa tidak ada cacat celanya dengan hukuman yang dijatuhkan dan

kerana keputusan tersebut melibatkan perkara dasar. Mahkamah Rayuan tidak dapat mencari di mana silapnya hakim Mahkamah Tinggi dalam melaksanakan budi bicaranya mahupun dalam membuat keputusannya itu.

[2] Mahkamah memberi perhatian yang lebih kepada proses membuat keputusan dan bukannya kepada keputusan itu sendiri. Mahkamah tidak sayugianya mempersoal keputusan pentadbiran responden, kerana itu merupakan budi bicara mutlaknya.

[3] Keseimbangan memanglah menjadi alasan untuk kajian semula. Namun, dalam kes semasa, Mahkamah Rayuan tidak menjumpai apa-apa alasan untuk mengganggu keputusan hakim Mahkamah Tinggi atas keengganannya mengeluarkan perintah *certiorari*. Menjadi pendapat Mahkamah Rayuan bahawa hukuman buang kerja adalah seimbang dengan kesalahan disiplin di bawah pertuduhan kedua.

Case(s) referred to:

Ekambaram Savarimuthu v. Ketua Polis Daerah Melaka Tengah [1997] 2 MLJ 457 ***(refd)***

Michael Lee Fook Wah v. Minister of Human Resources Malaysia & Anor [1998] 1 CLJ 227 CA ***(refd)***

Non-Metalic Mineral Products Manufacturing Employees Union & Ors v. South East Asia Fire Bricks Sdn Bhd [1976] 2 MLJ 67 ***(refd)***

R Rama Chandran v. The Industrial Court of Malaysia [1997] 1 CLJ 147 FC ***(refd)***

Legislation referred to:

Police Act 1967, s. 97

Police (Conduct and Discipline) (Junior Police Officer and Constables) Regulations 1970, reg. 2

Rules of the High Court 1980, O. 53 r. 1

For the appellant - Fabian Andrew Sigar; M/s John Shek, Sigar, Wei Yee & Co
For the respondent - Azizah Nawawi SFC

[Appeal from High Court, Kuching; Originating Motion No: 25-24-98

Reported by Andrew Christopher Simon

JUDGMENT

Mohd Ghazali Yusoff JCA:

The appellant was granted leave to apply for an order of *certiorari* to quash the decision of the respondent dated 5 May 1997 in dismissing the appellant from the police force (hereafter referred to as "the said decision"). Consequently, by notice of originating motion the appellant applied to remove

to the High Court an order of *certiorari* pursuant to O. 53 r. 1 of the Rules of the High Court 1980 to quash the said decision and or an order that the respondent reinstate him to his former status with the police force with no loss of salary or rank and pay him arrears of salary and other remuneration due to him from 5 May 1997 till date of reinstatement (hereafter referred to as "the application").

The High Court dismissed the application with costs and against that decision the appellant appealed to this court. On 27 July 2003 we dismissed the appeal with costs.

The facts showed that the appellant joined the police force in 1972. He was promoted to the rank of lance corporal in 1989. At the material time he was attached to the Transport Branch, Police Divisional Headquarters, Kuching. On application by Malayan Banking Bhd, the appellant was adjudged a bankrupt on 25 August 1995.

On 15 March 1997, the appellant received a letter from the respondent informing him that disciplinary action will be initiated against him based upon two charges, which were annexed to that letter, and that the hearing will be held on 31 March 1997 at the Police Headquarters, Kuching. That letter also informed the appellant of his entitlement to request for copies of documents relating to the case against him and of his right to be represented at the hearing. The two charges read as follows:

PERTUDUHAN PERTAMA

Bahawa kamu L/Kpl 60379 Mohd Din bin Talip telah membuat pinjaman wang melalui Kad Kredit Malayan Banking Bhd sebanyak RM13,373.49 termasuk faedah pada tahun 1991 dan Mayban Finance Bhd sebanyak RM6,740.32 termasuk faedah pada tahun 1992. Dimasa yang sama kamu didapati gagal melaporkan dengan segera tentang kesusahan berat kerana berhutang kepada Pegawai Kanannnya mengikut kehendak HT/KPN 207 para 96. Oleh yang demikian kamu telah melakukan satu kesalahan tatatertib dibawah Jadual 2(7) Peraturan-Peraturan Polis (Kelakuan dan Tatatertib) (Pegawai-Pegawai Rendah Polis Dan Mata-mata) 1970 dan P.U.(A) 86 bertarikh 24.02.1970 dan P.U.(A) 56 (Pindaan) 08.02.1984 dan boleh dihukum dibawah Peraturan yang sama.

PERTUDUHAN KEDUA

Bahawa kamu L/Kpl 60379 Mohd Din bin Talip membuat pinjaman wang melalui Kad Kredit Malayan Banking Bhd sebanyak RM13,373.49 termasuk faedah pada tahun 1991, MBF Finance Bhd. sebanyak RM3,312.93 termasuk faedah pada tahun 1991 dan Mayban Finance Bhd sebanyak RM6,740.32 termasuk faedah pada tahun 1992 dan gagal membuat sebarang pembayaran balik kepada Syarikat-Syarikat Kewangan berkenaan sehingga telah diambil tindakan Undang-Undang terhadap kamu melalui Mahkamah Tinggi Sabah &

Sarawak di Kuching dalam perkara kebankrapan No. 29-117-95 bertarikh 24 Januari 1996. Oleh yang demikian kamu telah mencemarkan nama baik Pasukan dan melakukan satu kesalahan tatatertib di bawah Jadual 2 (12) Peraturan-Peraturan Polis (Kelakuan dan Tatatertib) (Pegawai-Pegawai Rendah Polis Dan Mata-mata) 1970 dun P.U. (A) 86 bertarikh 24.02.1970 dan P.U. (A) 56 (Pindaan) 08.02.1984 dan boleh dihukum dibawah Peraturan yang sama.

On 31 March 1997, before the disciplinary board, the appellant pleaded not guilty to the two charges preferred against him. The hearing was adjourned to 5 May 1997 and on that date he pleaded guilty to both charges. For the first charge, the punishment meted out was a severe reprimand and for the second charge, he was dismissed from the police force with immediate effect, *viz.*, 5 May 1997.

The minutes of the proceedings before the disciplinary board on 5 May 1997 showed the following:

(i) the two charges were read to the appellant and he replied he understood the contents;

(ii) the appellant pleaded guilty to both charges;

(iii) the disciplinary board explained to the appellant that as he has pleaded guilty no hearing will be conducted and that the disciplinary board will pass judgment on the facts before them; the appellant replied he understood the consequences of pleading guilty;

(iv) before passing sentence, the disciplinary board asked the appellant as to whether he wished to make any mitigation;

the appellant prayed for leniency and in this respect the minutes of the proceedings reads:

2.6.3. Pengingkar merayu agar tidak dikenakan hukuman berat atau buang kerja oleh kerana beliau tidak melakukan sebarang kesalahan jenayah;

(v) after a short adjournment the disciplinary board convened once again; the minutes as to what transpired reads:

6. PENERANGAN SEBELUM HUKUMAN DIJATUHKAN

Pengingkar L/Kpl. 60379 Mohd Din bin Talip telah dimaklumkan bahawa diatas pengakuan beliau sendiri saya dapati pengingkar bersalah di atas dua pertuduhan yang dihadapkan terhadap beliau seperti di Lampiran 'A'. Saya telah menerangkan bentuk-bentuk hukuman yang saya berkuasa menjatuhkan hukuman seperti berikut 'Celaan-celaan keras, denda sebulan gaji, turun pangkat atau dibuang kerja'. Kesalahan-kesalahan yang dilakukan oleh pengingkar adalah berbentuk ingkar perintah yang berat. Seseorang yang telah dijatuhkan

perintah penghukuman kerana kebankrapan dan seterusnya dibebankan dengan hutang berat tidak akan dapat menunaikan tanggungjawab sebagai seorang pegawai polis dengan baik, saksama dan effisyen. Perintah penerimaan dan penghukuman terhadap pengingkar oleh Mahkamah Tinggi Malaya di Kuala Lumpur pda 12hb Oktober 1993 (kerana kegagalan beliau menyelesaikan hutang dengan Malayan Banking Berhad) adalah jelas menunjukkan yang pengingkar telah melakukan perlanggaran tatatertib:

i) Ingkar perintah – Jadual 2(7) PP Polis 1970 kerana tidak melaporkan kesusahan berat berhutang; dan

ii) Mencemarkan nama baik pasukan – Jadual 2(12) PP Polis 1970.

Di atas kesalahan-kesalahan tatatertib yang telah dilakukan oleh pengingkar, maka wajarlah hukuman yang berat dijatuhkan. Tanpa rasa prejudis saya jatuhkan hukuman.

7. HUKUMAN

Pengingkar L/Kpl. 60379 Mohd Din bin Talip dijatuhkan hukuman seperti berikut setelah mengaku bersalah:

Pertuduhan Pertama – Celaan keras

Pertuduhan Kedua – Dibuang kerja berkuatkuasa 5hb Mei 1997.

In his grounds of decision in rejecting the application for *certiorari*, the learned judge noted that there was nothing to show that the appellant's plea of guilty before the disciplinary board was a qualified or conditional plea. He was of the view that the appellant's contention that the disciplinary board had taken into consideration his past misconduct which swayed its decision to dismiss him cannot stand as his plea was voluntarily made. He was also of the view that the sentence was based on the fact that the fair name of the police force would be tarnished by his act of bankruptcy and that it would adversely reflect on the police force to keep an undischarged bankrupt in the force. In dismissing the application with costs, the learned judge said:

As the dismissal is a matter of policy, which the Board had not wrongly exercised, the court will not interfere. There was no evidence of procedural impropriety or that the Board had exceeded its power or jurisdiction; and this is not a case where an order of *certiorari* may be granted.

At the outset of the hearing of this appeal, the appellant's counsel informed us that he was only proceeding on ground 3 of his memorandum of appeal, namely, that the learned judge erred in law and in fact when he held that "As the dismissal is a matter of policy, which the Board had not wrongly exercised, the court will not interfere". Counsel argued there was no evidence to show the existence of such a policy. He then canvassed the following arguments:

(i) to say that the dismissal was a matter of policy is totally misconceived, unreasonable and without basis; the learned judge had wrongly interpreted such notion and relied on his own presumption;

(ii) the policy adopted by the adjudicating officer was merely a discretionary policy of the adjudicating officer himself and has nothing to do with the Police Act 1967, nor was it stipulated in the Police (Conduct and Discipline) (Junior Police Officer and Constables) Regulations 1970;

(iii) there is nothing to show that when a constable is being adjudged a bankrupt, dismissal action would be the only remedy available for the adjudicating officer to follow;

(iv) the dismissal of the appellant being a bankrupt has nothing to do with tainting the image of the police force and that such action by the adjudicating officer tantamounts to an abuse of the power vested in him; further, there was no directive from the higher authority to warrant such an action;

(v) even if the appellant was adjudged a bankrupt, the fact still remained that a letter from the official assignee office dated 6 April 1997 proved that the appellant has never failed nor defaulted in his monthly payments nor was it stated that the appellant has ever failed to perform his obligatory duty to pay his repayment payment to the official assignee's office.

We cannot see any merit in the above arguments. The remedy by way of *certiorari* is an extraordinary jurisdiction and a discretionary remedy with the High Court. In his book entitled *"Administrative Law of Malaysia and Singapore"*, Professor M.P. Jain, in relation to the remedy, made the following observations:

(i) *certiorari* has emerged into a general remedy for the control of decisions by the administration affecting the rights of the people;

(ii) *certiorari* is issued when the body in question has completed its work, disposed of the matter and given its determination; *certiorari* is thus issued to quash such a determination;

(iii) *certiorari* is issued when an adjudicatory body has infringed norms of natural justice, or acts under an invalid law, or commits errors of jurisdiction, or there is an error of law apparent on the face of the record, or where its decision is based on findings of fact for which there is no legal evidence in support;

In *R Rama Chandran v. The Industrial Court of Malaysia* [1997] 1 CLJ 147, Edgar Joseph Jr FCJ said (at p. 227) said "Judicial review is a discretionary jurisdiction".

In the instant case the learned Judge of the High Court at Kuching declined to issue the order of *certiorari* to quash the said decision as he was, *inter alia*, of the view that there was nothing wrong with the punishment meted out and that policy considerations were involved in the decision made by the disciplinary board. We cannot find where he went wrong in exercising his discretion and in making the decision that he did. In *Non-Metallic Mineral Products Manufacturing Employees Union & Ors v. South East Asia Fire Bricks Sdn Bhd* [1976] 2 MLJ 67 Raja Azlan Shah FJ (as he then was) said (at p. 68):

> The jurisdiction of the High Court to issue orders of *certiorari* is neither an appellate nor a revisional jurisdiction. Also from the very nature of the power conferred under section 25 of the Courts of Judicature Act 1964, it is clear that in exercise of this power the High Court exercised original jurisdiction. This jurisdiction stems from the prerogative jurisdiction inherited from the United Kingdom courts and its object is mainly to enable the superior courts to keep inferior tribunals within the bounds of their authority. The supervisory character is essential for always in the background there is the beguiling illusion that an inferior tribunal entrusted to hand down awards of a final nature may hand down awards as it likes. Therefore the jurisdiction may for convenience be described as an extraordinary original jurisdiction.

In *R Rama Chandran v. The Industrial Court of Malaysia, supra*, Edgar Joseph Jr FCJ said (at pp. 172-173):

> It is often said that Judicial Review is concerned not with the decision but the decision making process. (See eg, *Chief Constable of North Wales Police v. Evans* [1982] 1 WLR 1155). This proposition, at full face value, may well convey the impression that the jurisdiction of the courts in Judicial Review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which he has been subjected. Put differently, in the words of Lord Diplock in *Council of Civil Service Unions & Ors v. Minister for the Civil Service* [1985] AC 374, where the impugned decision is flawed on the ground of procedural impropriety.
>
> But Lord Diplock's other grounds for impugning a decision susceptible to Judicial Review make it abundantly clear that such a decision is also open to challenge on grounds of 'illegality' and 'irrationality' and, in practice, this permits the courts to scrutinize such decisions not only for process, but also for substance.

In this context, it is useful to note how Lord Diplock (at pp 401-411) defined the three grounds of review, to wit, (i) illegality, (ii) irrationality, and (iii) procedural impropriety. This is how he put it:

> By 'illegality' as a ground for Judicial Review I mean that the decision maker must understand directly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of a dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.
>
> By 'irrationality' I mean what can by now be succinctly referred to as '*Wednesbury* unreasonableness' (see *Associated Provincial Picture Houses Ltd v. Wednesbury Corp* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v. Bairstow* [1956] AC 14, of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decision maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.
>
> I have described the third head as 'procedural impropriety rather than failure to observe basic rules of natural justice or failing to act with procedural fairness towards the person who will affected by the decision. This is because susceptibility to Judicial Review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

Lord Diplock also mentioned 'proportionality' as a possible fourth ground of review which called for development.

On the possible fourth ground of review, *viz*., "proportionality", Edgar Joseph Jr FCJ said (at p. 174):

> Turning to Lord Diplocks's fourth ground of Judicial Review – namely, proportionality – there are cases in the United Kingdom which point to the conclusion that even where EEC law is not applicable, such a principle has been recognized as a general principle of English law, and when applied, it enables the court to review an impugned decision for substance as well as process.

On the same issue, Edgar Joseph Jr FCJ continued (at p. 175):

> In Malaysia, in *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261, an appeal arising from the dismissal of a suit by the High Court at Johor Bahru, in a case concerning a headmaster of a National Type Government School, who had been dismissed from service ... Gopal Sri Ram JCA, speaking for the majority in the Court of Appeal, did specifically use the term 'disproportionate' when he quite correctly quashed the order of dismissal and substituted, *in lieu* thereof, an order that the employee be reduced in rank and be paid all arrears of salary and other emoluments due to him.

In *Ekambaram a/l Savarimuthu v. Ketua Polis Daerah Melaka Tengah* [1997] 2 MLJ 457, disciplinary proceedings were initiated against the applicant, a member of the police force wherein he was dismissed from service. He was alleged to have committed an offence of wilfully disobeying a lawful, namely, purchasing a new motor-car without obtaining any prior approval from his superiors. Suriyadi J granted the applicant's application for *certiorari* and quashed the order of dismissal meted out by the disciplinary board on the ground, *inter alia*, that the sentence was irrational and disproportionate to the offence. In relation to the punishment meted out, *viz.*, dismissal from the police force, Suriyadi J said (at p. 462):

> This bizarre sentence went against all tenets of rationality and on that consideration I deemed it fit to scrutinize the case, not only in relation to the process, but also for substance. On this point I was guided by the case of *R Rama Chandran v. The Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 ... .

In the matter before us, the appellant's counsel has narrowed down his appeal, upon abandoning all the other grounds in the memorandum of appeal, to only one ground, namely, that the learned judge was wrong in holding that dismissal was a matter of policy. He argued that there was no evidence to show the existence of such a policy. We do not think that this was the main consideration which led the learned judge to refuse the application for an order of *certiorari*. We have perused the records of the disciplinary proceedings taken against the appellant leading to his dismissal from the police force and found there was no clear error of law on the face of the record. Regulation 2 of the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 (P.U.(A) 86) (hereafter referred to as "the Regulations") under which provisions the said two charges were based upon reads:

> Any officer who is found guilty of a disciplinary offence as specified in the Schedule hereto shall be liable to any of the punishments as specified in that Schedule.

The said two charges were based on the following disciplinary offences as provided for under the Schedule to the Regulations and promulgated pursuant to reg. 2 and it, *inter alia*, reads:

> Any junior police officer or constable who:
>
> (7) wilfully disobeys any lawful order or command, whether written or otherwise, or without good cause omits or neglects to carry out promptly any such order or command or perform any duty;
>
> (12) behaves in a disorderly manner or in a manner which is prejudicial to discipline or which is likely to bring discredit on the reputation of the Force or the public service;
>
> shall be guilty of an offence against discipline and shall be liable to any of the following punishments:
>
> (a) Dismissal;
>
> (b) Reduction in rank;
>
> (c) Deferment of increment;
>
> (d) Stoppage of increment;
>
> (e) Fine not exceeding one month's pay;
>
> (f) Severe Reprimand;
>
> (g) Reprimand.

The said first charge also referred to para. 96 of the "Standing Orders" which are administrative orders issued by the Inspector General of Police pursuant to s. 97 of the Police Act 1967. Paragraph 96 of the "Standing Orders" entitled "Tugas melapor hutang" reads:

> Mana-mana anggota Pasukan yang mendapati bahawa hutangnya terjumlah kepada kesesakan wang yang serius seperti diperintahkan di ceraian 96 di bawah ini, hendaklah dengan segera melaporkan perkara itu kepada pegawai atasannya yang terdekap sekali atau, dalam hal pegawai kanan polis, kepada Pegawai Pemerintahnya. Kegagalan membuat laporan demikian akan dianggap sebagai melanggar tatatertib. Jika keberhutangan demikian adalah akibat daripada nasib malang yang tidak dapat dielak, nasihat dan bantuan hendaklah diberi, jika boleh.

The appellant had pleaded to this charge of wilfully disobeying a lawful order, namely, para. 96 of the "Standing Orders", *viz.*, he failed to report to his superior officer the fact that he was heavily in debt. The punishment imposed by the disciplinary board was a severe reprimand.

In relation to the second charge, which relates to the bankruptcy order having being made against him on 24 January 1996, he was found guilty of the disciplinary offence of having brought discredit on the reputation of the police force. The punishment imposed was dismissal from the police force.

This appeal has been confined to only the second charge. We are of the view that the dismissal was made in accordance with law. The appellant had pleaded guilty to the said charge. He understood the charge read over to him and he was well-aware of the facts that he is being charged on. He was afforded the right to a reasonable opportunity of being heard before being dismissed. In the course of the disciplinary proceedings he had pleaded that as he has not committed any criminal offence he should not be severely punished or dismissed. The minutes of the disciplinary board, reproduced above, showed that the board reached its decision justly and impartially. On that second charge the appellant shall be liable to any of the following punishments, namely, dismissal, reduction in rank, deferment of increment, stoppage of increment, fine not exceeding one month's pay, severe reprimand and reprimand. The disciplinary board had determined that he be dismissed from the police force.

Learned counsel for the appellant complained that in refusing the application for *certiorari*, the learned judge was wrong in holding that dismissal was a matter of policy as there was no evidence to show the existence of such a policy. He also complained that there is nothing to show that when a constable is being adjudged a bankrupt, dismissal action would be the only remedy available for the adjudicating officer to follow. He contended that the dismissal of the appellant being a bankrupt has nothing to do with tainting the image of the police force and that such action by the adjudicating officer is tantamount to an abuse of the power vested in him; further, there was no directive from the higher authority to warrant such an action. We cannot see any merits in these contentions. The facts clearly showed that the appellant failed to pay the debts plus interest and that caused him to be adjudged bankrupt. We are of the view that policy considerations are only within the knowledge of the respondent. In *Michael Lee Fook Wah v. Minister of Human Resources Malaysia & Anor* [1998] 1 CLJ 227, Shaik Daud JCA said (at p. 232):

> First and foremost, it must be emphasized that in an application for *certiorari*, the High Court is not sitting in its appellate jurisdiction but in its supervisory jurisdiction. The court is more concerned with the decision-making process and not the decision itself. The court should not readily question the administrative decision of the first respondent as that is his absolute discretion. If the first respondent had acted *ultra vires*, unfairly or unjustly in exercising his discretion, then it is the duty of the courts to interfere in an application for review of

> that decision. The underlying principles of judicial review have been stated in a number of cases, and it is the exercise by those with whom discretionary power is vested, not on the court, that the courts are required to review.

We cannot see where the learned judge erred in saying that dismissal was a matter of policy, which as we have stated earlier, was not the main consideration which led him to refuse the application for *certiorari*. Incidentally, the minutes of the disciplinary board, reproduced earlier, showed that the adjudicating officer had explained to the appellant that a member of the police force who has been adjudged bankrupt will not be in a position to carry out his responsibilities as a police officer justly and efficiently. As pointed by Shaik Daud JCA in the case cited above, the court is more concerned with the decision-making process and not the decision itself and the court should not readily question the administrative decision of the respondent as that is its absolute discretion. In *R Rama Chandran v. The Industrial Court of Malaysia, supra,* Edgar Joseph Jr FCJ said (at p. 181):

> To recapitulate, I had at the outset observed that supervisory review of jurisdiction is a creature of the common law and is available in the exercise of the court's inherent power but its extent may be determined not merely by judicial development but also by legislative intervention.
>
> In this context, it is pertinent to note that the jurisdiction of the courts in Malaysia to issue prerogative orders is derived from the prerogative jurisdiction inherited from English decisions as well as from statute. The Courts of Judicature Act 1964, by s. 25 read with para 1 of the Schedule thereto, provides that the powers of the High Court include:
>
> > Power to issue to any person or authority directions, orders or writs, including writs of the nature of *habeas corpus*, mandamus, prohibition, *quo warranto* and *certiorari*, **or any others, for the enforcement of the rights conferred by Part II of the Constitution, or any of them for any purpose.** (emphasis added).
>
> The Schedule is entitled 'Additional Powers' and this suggests powers over and above those already enjoyed by the High Court.
>
> Part II of the Federal Constitution deals with the fundamental liberties guaranteed by the Federal Constitution. And, as was correctly pointed out by Gopal Sri Ram JCA, when speaking for the Court of Appeal in *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan* [1996] 1 MLJ 481 at p. 510:
>
> > Quite apart from being a proprietary right, the right of livelihood is one of the fundamental liberties guaranteed under Part II of the Federal Constitution.

But at pp. 183-184, Edgar Joseph Jr FCJ did caution as follows:

> Needless to say, if, as appears to be the case, this wider power is enjoyed by our courts, the decision whether to exercise it, and if so, in what manner, are matters which call for the utmost care and circumspection, strict regard being had to the subject matter, the nature of the impugned decision and other relevant discretionary factors. A flexible test whose content will be governed by all the circumstances of the particular case will have to be applied.
>
> For example, *where policy considerations are involved in administrative decisions and court do not possess knowledge of the policy considerations which underlie such decisions, courts ought not to review the reasoning of the administrative body, with a view to substituting their own opinion on the basis of what they consider to be fair and reasonable on the merits, for to do so would amount to a usurpation of the power on the part of the courts.* (emphasis added)

We are of the view that "proportionality" is a possible fourth ground of review but in the instant case we cannot find any ground for interfering with the decision of the learned High Court Judge in refusing to issue the order for *certiorari*. The minutes showed that the disciplinary board scrutinized all the available facts before dismissing the appellant. Several forms of punishment are provided for reg. 2 of the Regulations. The disciplinary board had to determine whether the circumstances or gravity of the disciplinary offence under the second charge would justify the appellant's dismissal. The disciplinary board has made the decision that it did. The appellant was adjudged bankrupt and he was charged with having tarnished the name of the police force by being adjudged bankrupt. We cannot find anything to suggest that the decision to dismiss him was irrational or "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it". We are of the view that the punishment of dismissal was proportionate with the disciplinary offence under the second charge.

We affirmed the decision of the learned judge in refusing to issue the order for *certiorari* and thus had dismissed the appeal with costs. The deposit of RM500 was ordered to be remitted to the respondent as costs.